

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Skype Communications S.A.R.L.	)	
Petition to Confirm A Consumer's Right	)	RM-11361
To Use Internet Software and Attach	)	
Devices to Wireless Networks	)	
	)	

**COMMENTS FROM MOBILE INDUSTRY EXECUTIVES\***

We have never before participated in a public hearing or submitted comments to the FCC. However, as cellular industry veterans, we have had to deal with the issues raised by Skype in its petition and believe the lack of true competition in the mobile industry is of huge importance to consumers. The issues raised by Skype go beyond VOIP or a single company's agenda. They are about whether US consumers will have access to competitive, consumer-focused, innovative wireless Internet services made possible by technological advances, but currently stifled by an oligopolistic, closed market for cellular handsets.

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\* We submit these comments in our individual capacities and not as the representatives or agents of any corporate entities. Ram Fish has been working in the cellular industry for the last ten years, most recently as CEO of Fonav Inc., which develops software for WiFi enabled handsets. He holds an MBA from Yale University and an MS in Computer Engineering from Case Western Reserve University. Jason Devitt has been the founder and CEO of two mobile data companies. The first, Vindigo, was one of the first companies in the US to publish content and applications for mobile phones, including mobile versions of Mapquest and the New York Times. His new company, Skydeck, is developing a range of mobile applications and services for consumers and small businesses.

**I. CELLULAR HANDSETS HAVE BECOME HANDHELD COMPUTERS, USED FOR ACCESSING INFORMATION AND OTHER METHODS OF COMMUNICATION IN ADDITION TO VOICE CALLS.**

Cellular handsets have become small and powerful computers: In terms of capabilities, handsets pack more processing power, memory, and functionality than PCs had twelve years ago. For example when Windows 95 was launched, the typical computer had a 200 Mhz 386, 40 MB hard drive and 64MB of memory. A handset today, such as the Nokia N80, has ARM9 200Mhz of processing power, 64MB of memory and a 64MB Flash drive. In many respects, handsets are actually more sophisticated than PCs were, as their connectivity and multimedia features are richer, with one or two video cameras built in, multiple network connections (Cellular, Bluetooth, WiFi) and sometimes two different displays. These capabilities translate into richer opportunities for innovation and new services.

Handsets have become our link to society and information: Handsets are much more prevalent in our daily lives than PCs: Handsets are typically one or two feet away from us for most of the day. This makes them more important than PCs as portals to the vast information and communication resources of the Internet, and makes it even more important for the FCC to act to protect consumer rights with regard to mobile handsets.

## **II. THE CURRENT CELLULAR MARKET IS TIGHTLY CONTROLLED AND OLIGOPOLISTIC, WHICH RESULTS IN INFERIOR CONSUMER OFFERINGS.**

Professor Tim Wu's excellent white paper<sup>1</sup> discusses the business environment in detail. We would like to highlight the following examples:

- Example 1: Limiting handset features: Operators have consistently limited or removed handset features which would directly benefit consumers. Professor Wu details in his white paper how Verizon disabled the Bluetooth offering on their handsets and how AT&T has disabled WiFi on the Nokia E62. Nokia N-series handsets are mostly not available in the US, and WiFi is not supported on the one model that is available. Consumers can benefit greatly from handsets that support WiFi in addition to cellular: they can use their existing broadband connection while at home or at the office to make VOIP calls, receive emails, browse the Internet or send photos they took with the handset. However, cellular operators have been either actively removing WiFi functionality (as in the case of the Nokia E62) or refrained from adding WiFi enabled handsets to their portfolio.
- Example 2: Slowing adoption of new consumer services: A significant number of consumers would like to get "visual" voice mail details directly on their handset (similar to SMS or email) which would save them from having to call voice mail or spend their cellular minutes retrieving and deleting messages. US operators have resisted offering this service

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<sup>1</sup> Wu, Tim, "Wireless Net Neutrality: Cellular Carterfone on Mobile Networks" (February 2007). New America Foundation Wireless Future Program Working Paper No. 17 Available at SSRN: <http://ssrn.com/abstract=962027>

even though it became technologically possible to implement a few years go. Their typical reasoning has been that the more minutes consumers spend, the better it is for the operators, so having consumers spend their minutes retrieving and deleting voice messages is good business. Because the cellular market is so concentrated, consumer satisfaction or competitive pressure did not play a role in this decision. In 2007, Apple managed to force Cingular into offering this service on the iPhone - a service that millions of consumers could already have been using on their handsets today if operators were really competing for consumers' benefit.

- Example 3: Bundling handsets with service: US operators only offer service plans where the handset costs and the service costs are bundled together. Specifically, If a consumer chooses to purchase their own handset from a third party, they still have to pay the same monthly fee as if they got a 'free' handset from the operator. As a result there is little incentive for a consumer to buy a handset from a 3<sup>rd</sup> party or for a handset manufacturer to market handsets directly to consumers. Without a viable "service only" price plans, the barrier to building and distributing handsets outside of the operator channel is extremely high. This is specifically contrary to an FCC 1992 policy statement that said that services and CPE can be offered on a bundled basis as long as the cellular service also is offered separately at a nondiscriminatory price to cellular agents. The FCC said at the time: "This change in policy will

ensure that facilities-based carriers who provide cellular CPE and cellular service on a packaged basis will continue to offer such cellular service to agents, resellers and other customers subject to the just and reasonable provisions of the Communications Act."<sup>2</sup>

- Example 4: Verizon Brew service: Verizon's application development process requires all applications to be tested and authorized by both Verizon and Qualcomm. Furthermore, in order to offer applications, the content providers (software developers) must agree to share a significant part of their potential revenues with the operator (Verizon). Where would the PC industry and the Internet be today if all the software installed on our computers had to be authorized by both Intel and your cable company? This is the current state of the cellular market.

These are only some examples of how the cellular market today is geared toward maximizing consumers' monthly charges while leveraging the operators' control of the handsets, to the detriment of consumers in terms of both costs and restricted access to features and services.

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<sup>2</sup> FCC Policy Statement, June 20, 1991, pp. 1-3

### **III. ENFORCING THE FCC'S EXISTING BROADBAND GUIDELINES IN THE CELLULAR HANDSET MARKET WILL BENEFIT CONSUMERS AND CREATE NEW BUSINESS OPPORTUNITIES.**

If we had been asked in 1968 what new innovations might follow from the Carterfone ruling, we would probably have said new and more powerful telephones, public address systems, and answering machines. We could not have predicted the fax machine or the Hayes modem, let alone eBay, Google, and instant messaging.

Similarly, we cannot predict what useful inventions will result from the enforcement of Carterfone in the mobile handset environment. But we can try to highlight some of the opportunities that might emerge. We believe the opportunities are significant and go beyond Skype or voice over IP. The opportunities are wide and cover horizontal consumer offerings, vertical market segments and public safety issues. As examples, we would like the Commission to consider the following:

Example 1: Free handsets and richer consumer offering with lower monthly service fees: A startup or existing portal might decide to offer handsets with their own "Content shop" and advertisement service. Mobile content, such as ring tones, screen savers or games are very popular with consumers who are willing to pay a high premium for this content on mobile devices. Mobile advertisements have a significant potential: handsets have a high resolution color screen used by consumers for most of the day and can display videos. Therefore, targeted advertisements can be very lucrative. If

a company is given the ability to monetize the content and advertisements, the resulting revenue stream could be used to subsidize the handset or the monthly fee, for the benefit of consumers. The users will maintain their existing voice and cellular service with the cellular operators, but the content and information services will be offered by a third party. To accomplish this today would require the third party to secure the operator's agreement and pay a significant part of the revenues to the operator.

Example 2: First responders: First responders need specialized CPE that carriers are reluctant to sell. First responders need phones that support one-to-many communications, under the control of an incident commander; speakerphones powerful enough for everyone at the scene of an incident to hear; and handsets that can work across multiple network technologies, both commercial and proprietary. We believe that many more OEMs would be prepared to develop and market such devices if they could sell them directly to emergency services without having to sell the idea to carriers first.

Example 3: Medical monitoring: Wireless monitoring of patients at risk of a heart attack or similar crisis can save lives and lower the cost of healthcare. But we need cheap, reliable, wireless devices that meet the needs of doctors and patients, not the needs of wireless carriers. Again, if equipment manufacturers did not need to seek the permission of carriers to bring these devices to market, we would see far more innovation and investment than we see today.

#### **IV. REMEDY: THE FCC SHOULD INSIST ON CELLULAR OPERATOR COMPLIANCE AND REMOVE ANY SPECIAL TREATMENT FOR THE WIRELESS INDUSTRY.**

The problem is not lack of competition (although further consolidation in the market would make matters worse). The problem is structural: all of the carriers are vertically integrated. To bring any new product to market, entrepreneurs require the permission of one or more carriers. We cannot predict all of the innovations that might spring from a “cellular Carterfone.” But we see the above examples as sufficient to raise concern. We believe that there is a structural problem in the marketplace that cannot be resolved by competition alone.

Applying the same rules to wireless carriers that the Commission has applied to wireline carriers for almost forty years would solve this problem immediately and in time give rise to hundreds of new and innovative products and services, to the great benefit of American consumers and businesses.

Therefore, we believe that the FCC should:

- Enforce Carterfone principles: The commission should verify that (i) Devices can be offered by third parties and can not be blocked, and (ii) Operators should offer “service only” plans that do not bundle a handset with the service. If a consumer chooses to purchase their own device, operators should offer a meaningful service-only plan.
- Apply wired & broadband Net neutrality principles to Wireless: When it comes to IP communication it is becoming harder and harder to

distinguish between wireless and wireline. There is only one Internet and one public IP network. Some nodes might be wired, some nodes might be wireless through the cellular network, some might be wireless through WiFi and some might use both or different networks. Therefore, the same net neutrality principles defined by the FCC in 2005 for broadband providers should be applied to cellular:

1. Consumers are entitled to access the lawful Internet content of their choice;
2. Consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement;
3. Consumers are entitled to connect their choice of legal devices that do not harm the network;
4. Consumers are entitled to competition among network providers, application and service providers, and content providers.

Respectfully submitted,

Ram Fish: \_\_\_\_\_/S/\_\_\_\_\_

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